

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 15, 2006 Session

**UNITED STATES AVIATION UNDERWRITERS, INC., ET AL. v.
JACQUELYN TEAL SELLE, a/k/a TEAL DUGGER SELLE, ET AL.**

**Direct Appeal from the Chancery Court for Maury County
No. 03-701 Jim T. Hamilton, Judge**

No. M2004-02243-COA-R3-CV - Filed January 31, 2006

Curtis M. Selle (“Decedent”), an employee of Haulers Insurance Company, Inc. (“Haulers”), died while piloting a plane in the course of his employment with Haulers. Haulers had insurance coverage provided by United States Aviation Underwriter’s, Inc. (“Plaintiff”) which included a “Voluntary Settlement Coverage” provision. This provision provided for the payment of up to \$250,000 *to or for* a party injured as the result of a plane crash in exchange for waiver of all claims of liability against Haulers. A dispute subsequently arose between Decedent’s mother, Patricia Selle (“Appellant”), and Decedent’s widow, Jacquelyn Teal Selle (“Appellee”), as to who should receive the \$250,000 proceeds from the voluntary settlement provision. Appellant argued that the terms of the policy provided that she, as the alleged residuary beneficiary of Decedent’s estate, should receive the funds. However, the trial court held that the proceeds inured to Appellee as the proceeds of a life insurance policy under Tenn. Code Ann. § 56-7-201 and/or as the proceeds of a wrongful death settlement under Tenn. Code Ann. § 20-5-106. Appellant appeals. We affirm the trial court’s holding that the proceeds from the voluntary settlement provision constitute the settlement of a wrongful death claim and thus inure to Appellee under Tenn. Code Ann. § 20-5-106.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Scott C. Williams and Keli S. Stewart, Nashville, Tennessee, for the appellant, Patricia B. Selle.

William S. Fleming and Michael D. Cox, Columbia, Tennessee, for the appellee, Jacquelyn Teal Selle.

OPINION

Factual Background and Procedural History

This case arises from the March 27, 2003, death of Curtis M. Selle (“Decedent”) in an aircraft accident. At the time of his death, Decedent was a corporate pilot employed by and working on behalf of Haulers Insurance Company, Inc. (“Haulers”). Through his employment with Haulers, Decedent was covered under an insurance policy issued by United States Aviation Underwriters, Inc. (“Plaintiff”), which afforded coverage for the aircraft Decedent was piloting and also included a type of coverage known as “Voluntary Settlement Coverage” (hereinafter referred to as “the voluntary settlement provision”) which provided up to \$250,000 in coverage for claimants who agreed to release or waive any and all liability claims, including wrongful death or survival actions, against Plaintiff or Haulers. With regard to the payment of policy proceeds, the insurance policy set forth the terms and conditions of payments and stated in relevant part that

[w]e will not be obligated to make a voluntary settlement offer to pay a claim to, or make a settlement with, *a passenger or his or her estate*, if you do not request us to do so within one (1) year of the occurrence involving an aircraft covered under this endorsement.

(emphasis added).

Prior to the discovery of the insurance policy containing the voluntary settlement provision, a dispute arose between Decedent’s mother, Patricia Selle (“Appellant”), and Decedent’s widow, Jacquelyn Teal Selle (“Appellee”) as to whether Decedent had died intestate. Decedent executed a Last Will and Testament (“the 1997 Will”) on October 23, 1997, naming his mother, Patricia Selle (“Appellant”), as Executrix and residuary beneficiary of his estate (“the Estate”). However, Decedent’s widow, Jacquelyn Teal Selle (“Appellee”), filed a petition on April 2, 2003, stating that Decedent had died intestate and that she was his sole legal heir. Appellee also requested that the trial court appoint her Administratrix of Decedent’s Estate, and the trial court so appointed her.

In conjunction with her assertion that Decedent died intestate, Appellee presented the trial court with a document dated September 28, 1998, entitled “Revised Will” (“the 1998 Will”). The 1998 Will was signed by Decedent and expressly stated that “[t]his will supersedes any and all previous editions including the revised Will dated 23, October, 1997.” In the 1998 Will, Decedent designated Appellee as the residuary beneficiary of Decedent’s Estate. During the proceedings on this matter, the trial court granted summary judgment in favor of Appellee finding that, although the 1998 Will was not valid because it contained the signature of only one witness, it nonetheless served as a revocation of the 1997 Will, thus leaving Appellee as Decedent’s only legal heir. Appellant subsequently appealed this ruling to this Court, and we reversed the trial court and held that the 1998 Will did not serve as a revocation of the 1997 Will.

See Selle v. Selle, No. M2003-01633-COA-R3CV, 2004 WL 2791616, at *2 (Tenn. Ct. App. Dec. 3, 2004).

Plaintiff became aware of the aforementioned dispute between Appellant and Appellee before its disbursement of the insurance proceeds pursuant to the voluntary settlement provision. Due to the conflicting claims among the parties regarding the proceeds, Plaintiff brought an action of interpleader against Appellant and Appellee requesting that the court decide the proper beneficiary of such proceeds. The court subsequently allowed Plaintiff to interplead the policy proceeds into the court and relieved Plaintiff of all further liability and responsibility to Appellant and Appellee. On July, 15, 2004, a bench trial was conducted to determine whether the policy proceeds passed as part of Decedent's estate by the terms of his will,¹ by intestate succession, or by the wrongful death statute which incorporates Tennessee law on intestate succession. At this hearing, Appellant argued that the plain language of the policy indicated a clear intent that the proceeds be made payable to either an individual passenger of an aircraft *or* to the *estate* of a deceased passenger. Specifically, in support of this argument, Appellant referred to a portion of the policy, previously referenced in this opinion, which stated

[w]e will not be obligated to make a voluntary settlement offer to pay a claim to, or make a settlement with, *a passenger or his or her estate*, if you do not request us to do so within one year of the occurrence involving an aircraft covered under this endorsement.

(emphasis added). Appellee responded with two arguments. First, Appellee argued that the policy proceeds inured to her under Tenn. Code Ann. § 56-7-201, which provides that all life insurance proceeds which have no designated beneficiary and which are not disposed of by will pass to such decedent's surviving spouse and children. Second, Appellee argued that the policy proceeds constituted payment for the wrongful death of Decedent, and thus under Tennessee's wrongful death statute, enumerated at Tenn. Code Ann. § 20-5-110, payment should be made for the benefit of the surviving spouse and/or children.

After hearing arguments from both sides on this issue, the trial court made the following findings:

At the time of this fatal plane crash, the decedent was employed by Hauler's Insurance Company as a pilot of Hauler's plane. There was an insurance policy which provided a type of coverage known as "Voluntary Settlement Coverage," whereby each passenger was covered for \$250,000.00. This type of coverage enables a claimant of the proceeds of the policy . . . to elect to accept a predetermined cash settlement rather than pursue legal remedies which would require the establishment of legal liability. The policy has one requirement

¹At the time of this hearing, this Court had not yet ruled that the 1998 Will failed to revoke Decedent's 1997 Will. *See Selle*, 2004 WL 2791616, at *2 (filed Dec. 3, 2004).

however, that is “We will not be obligated to make a voluntary settlement offer to pay a claim to, or make a settlement with, a passenger or his or her estate if you do not request us to do so within one year of the occurrence involving an aircraft under this endorsement.” This language comes from the policy and means nothing more than the claim must be made within one year from the plane crash. This Court finds that this clause has no bearing whatsoever on the distribution of the proceeds. . . .

This Court has previously held that the 1997 “Will” which was written by the decedent was revoked by the 1998 document. This decision is now before the Appellate Court.² The law is plain in Tennessee that the proceeds of an insurance policy would pass to the widow and children under the provisions of Tenn. Code Ann. § 56-7-201, without being subject to the debts of the decedent, unless specifically charged therewith in the “Will.”

There is a Tennessee case [*Fed. Ins. Co. v. Annie Laurie Daniel Quint*, 318 F. Supp. 269 (E.D. Tenn. 1970)], which discussed this distribution issue. The Court stated:

“where the Will of the deceased husband did not mention insurance, it was held that the proceeds of his insurance were not a part of his estate, although such insurance was the property of the husband and subject to his disposition, either during his lifetime or by Will, the proceeds of the insurance policy never became part of his testate estate; they inured directly at his death, to the benefit of his widow and children.”

Therefore, even if the Court of Appeals should overturn this Court’s opinion finding the 1997 “Will” to have been revoked and that the “Will” is valid, the proceeds of this policy would still pass to the widow. This Court does not believe for one minute the Court of Appeals will so find, but the result would be the same.

Another case on point, [*In re Gilly’s Estate*, 322 N.Y.S. 2d 742 (N.Y. Sur. Ct. 1971)], a New York case which arose out of the same plane crash as the [*Quint*] case. New York did not have a statute such as Tenn. Code Ann. § 56-7-201. The New York court held that the insurance policy did not specifically name beneficiaries, therefore the payment was for the wrongful death of the copilot and proceeds were to be distributed to those who suffered pecuniary loss.

Tennessee has a wrongful death statute: Tenn. Code Ann. § 20-5-110, which controls the distribution of proceeds from a wrongful death action. This statute makes it clear that a wrongful death is for the benefit of the surviving spouse and children. It has long been the law in Tennessee that wrongful death

²As previously noted, this Court reversed the trial court’s finding that the 1998 Will served as a revocation of the 1997 Will. See *Selle*, 2004 WL 2791616, at *2.

proceeds are distributed as personal property of the decedent. Another statute, Tenn. Code Ann. § 31-2-104[1], which addresses the distribution of personal property[,] . . . provides that the intestate share of the surviving spouse is, if, [sic] there is no surviving issue of the decedent, the entire intestate estate. One last Tennessee case, [*Foster v. Jeffers*], 813 S.W.2d 449, 452 (Tenn. Ct. App. 1991) held:

“It was the intent of the legislators that control over the surviving right of action ought to follow the priorities for distribution of personal property as set forth in the intestacy statutes It is the law in Tennessee that the proceeds from a wrongful death action become personal property of the deceased The proceeds from a wrongful death action cannot pass under the Will of the deceased.”

This Court therefore finds that as stated earlier, even if there is a valid “Will[,]” these proceeds would still pass to the widow, [Jacquelyn] Teal Selle.

This Court further finds that since there is no beneficiary named in this insurance policy, the proceeds are the result of a wrongful death action and the proceeds should go directly to the widow.

Appellant appeals.

Issues Presented for Review

We perceive the issue in this case to be whether the proceeds from the “voluntary settlement coverage” provision of the insurance policy in this case should be construed as an aircraft policy payable directly to Decedent’s estate, a payment from an insurance policy on Decedent’s life, or a settlement for a wrongful death action. For the reasons stated herein, we find that the policy proceeds constitute a wrongful death settlement payable to Appellee, and thus affirm the trial court’s holding in this regard.

Standard of Review

Interpretation of contract provisions constitutes a question of law. *Hamblen County v. City of Morristown*, 656 S.W.2d 331, 335-36 (Tenn. 1983). The standard of review for this Court on issues of law is *de novo*, with no presumption of correctness afforded to the conclusions of the court below. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000); Tenn R. App. P. 13(d) (2005).

Analysis

In the present case, Appellant asserts that the trial court erred in interpreting the voluntary settlement provision as a life insurance policy payable to Appellee under Tenn. Code Ann. § 56-7-201, or as a wrongful death benefit payable to Appellee under Tenn. Code Ann. § 20-5-106. Rather, as at trial, Appellant asserts here that the provision constitutes neither a life insurance policy nor a wrongful death benefit, but rather an “Aircraft Policy” expressly payable to Decedent’s estate under the terms of the insurance contract. We disagree with this contention.

In general, contracts of insurance are construed by courts according to the general rules of contract construction. *Tenn. Farmers Mut. Ins. Co v. Witt*, 857 S.W.2d 26, 30-32 (Tenn. 1993). When called upon to interpret a contract, courts seek to ascertain the intent of the parties through the natural and ordinary meaning of the words employed. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). In the present case, the disputed portion of the insurance contract provides as follows:

We will not be obligated to make a voluntary settlement offer to pay a claim to, or make a settlement with, *a passenger or his or her estate*, if you do not request us to do so within one year of the occurrence involving an aircraft covered under this endorsement.

(emphasis added). As previously noted in the facts section of this opinion, Appellant, based upon the above quoted clause, contends that “[t]he plain language of the . . . [policy] makes it clear that the [voluntary settlement] proceeds should be paid to Decedent’s Estate.” We disagree.

“In construing a contract, the entire contract should be considered in determining the meaning of any or all its parts.” *Cocke County Bd. of Highway Comm’rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985). Thus, where a party “seeks to enforce rights under a contract, an interpretation of the contract as a whole requires that [such] party not be permitted to interpret the contract in a piecemeal fashion by avoiding unfavorable terms.” *Benton v. Vanderbilt Univ.*, 137 S.W.3d 614, 619-20 (Tenn. 2004) (citing *U.S. Fidelity & Guar. Co. v. Elam*, 278 S.W.2d 693, 702 (Tenn. 1955)). As a result, in the case at bar we look to the entire voluntary settlement provision, in conjunction with the insurance contract as a whole, in interpreting whether Decedent’s Estate is the listed beneficiary as Appellant contends. Upon review of the policy and the disputed voluntary settlement provision, we agree with the trial court’s determination that the portion of the provision stating that Plaintiff “will not be obligated to make a voluntary settlement offer to pay a claim to, or make a settlement with, *a passenger or his or her estate*, if you do not request us to do so within one year,” (emphasis added), has no bearing on the distribution of policy proceeds, but rather only indicates that Haulers must make a claim for settlement within one year of an accident.

In support of this holding, we note that the insurance contract, as a whole, was written to provide coverage and protection to Haulers against monetary loss and legal liability arising out of

the operation of aircraft. In effectuating this coverage, Plaintiff included a voluntary settlement provision providing as follows:

Voluntary Settlement Coverage with Weekly Payments and Permanent Total Disability. “Your Liability Coverage” section appearing on Page 2 of your policy is extended to include Voluntary Settlement Coverage. We’ll offer on *your behalf* and at the *request of the Policyholder*, a sum *to or for each passenger* who receives certain injuries while riding in a covered aircraft with your permission. A passenger is anyone who enters the aircraft to ride in or operate it. It is a requirement of this offer that *we receive a complete and final release of all liability for the injuries covered under “Your Combined Coverage for bodily injury and property damage.”* We will not be obligated to make a voluntary settlement offer to pay a claim or, make a settlement with, a passenger or his or her estate, if you do not request us to do so within (1) year of the occurrence involving an aircraft covered under this endorsement.

What injuries are covered. Offers may be made *to or for passengers* who, immediately or within ninety (90) days after an occurrence, *die*, suffer permanent loss of sight or have an entire hand or foot completely severed in an occurrence while riding in a covered aircraft with your permission.

(emphasis added). After interpreting the above quoted language in light of the contract as a whole, it is clear to this Court that the sole purpose of the voluntary settlement provision is to provide *Haulers*, the insured party, with protection from liability actions which might arise in the event of an accident. Specifically, the provision seeks to bypass the imposition of liability actions against *Haulers* by offering lump sum payments *to or for* injured parties (meaning to the passenger or to a person who could assert a liability action on the passenger’s behalf), in exchange for a “complete and final release of all liability for injuries.” As a result, we conclude that the proceeds from the voluntary settlement provision are not automatically payable to any specifically named beneficiary as Appellant contends, but rather are payable to the party who has the right to bring a cause of action against *Haulers* as a result of the accident, whoever that may be, and *only* if such party agrees to waive all liability claims.

Having found that the policy contains no specifically named beneficiary, we next address the issue of how the voluntary settlement provision should be classified and to whom the proceeds from such provision should be paid. Research by the parties to this case and by this Court has provided only two cases which deal directly with the interpretation and classification of voluntary settlement provisions in aviation insurance policies: *Federal Insurance Company v. Quint*, 318 F. Supp. 269 (E.D. Tenn. 1970), and *In re Gilly’s Estate*, 322 N.Y.S.2d 742 (N.Y. Sur. Ct. 1971). Both cases arose from the same accident and dealt with the same “Liability-Guest Voluntary Settlement” provision in an insurance policy issued by Federal Insurance Company to the employer of both decedents. *In re Gilly’s Estate*, 322 N.Y.S.2d at 744. As

described by the Surrogate's Court in New York, the voluntary settlement provision in both cases provided as follows:

The second endorsement on the policy entitled "LIABILITY-GUEST VOLUNTARY SETTLEMENT", [sic] commences, - 'In consideration of the premium charged under the policy for Passenger Bodily Injury Liability. * * *' It thereafter provides for paying certain benefits (in this case \$25,000) at the request of the named insured, 'regardless of legal liability'. [sic] . . . It is a policy which inures to the benefit of third persons as well as the insured, unlike an accident and health policy which is a contractual obligation between the insured and insurer only. Significantly the policy goes on to say: '5. It is a condition of the payment of the benefits provided by this endorsement that upon acceptance of such payment the Guest and any person having a loss of service claim and any person having a claim by way of subrogation to the rights of such guest or other person and any person having the right to recover from the Insured expenses incurred because of such injury or death and, in the event of the death of the Guest, The person or persons having a cause of action for the death (emphasis added) shall execute a full legal release of all claims against the Insured * * * and if the injured Guest or any person claiming by, through or under such Guest shall refuse to accept the benefits offered under the provisions of this endorsement within 30 days following such an offer and to execute the necessary release, the Company will no longer be bound to pay such benefits.'

In re Gilly's Estate, 322 N.Y.S.2d at 745.

In the *Quint* case, the decedent, Robert J. Quint, died as the result of an accident involving an aircraft which he was co-piloting on behalf of his employer, the Pittston Clinchfield Coal Sales Corporation. *Quint*, 318 F. Supp. at 269-70. Subsequently, his widow and his children each claimed entitlement to the proceeds of the voluntary settlement provision (quoted above) contained in a policy issued to the decedent's employer. *Id.* As a result of the dispute, the insurance provider filed an action of interpleader in the United States District Court for the Eastern District of Tennessee and subsequently deposited the proceeds from the voluntary settlement provision into the registry of the court. *Id.* at 270. At a subsequent hearing on the matter, both parties stipulated

that the net proceeds of the interpleaded fund [were] payable under [Tenn. Code Ann.] § 56-1108, which provides as follows:

* * * Any life insurance effected by a husband[] on his own life shall, in case of his death, inure to the benefit of his widow and children; and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the husband. Provided, however, that any life insurance proceeds payable to the testate estate shall pass under the

dispositive provisions of the will, but shall not be subject to the debts of the husband unless specifically charged therewith in the will.³

Id. at 270. As a result of the stipulation, the district court treated the proceeds from the voluntary settlement coverage as life insurance, and proceeded “on the assumption that, in effecting his employment with its emoluments, Mr. Quint effected [the] insurance upon his own life.” *Id.* at 270 n.1. After concluding that the funds from the voluntary settlement provision did not pass under the provisions of the decedent’s will, the court distributed the policy proceeds to the decedent’s widow and children under Tennessee’s statutes of distribution, as mandated under Tenn. Code Ann. § 56-1108 (re-codified at Tenn. Code Ann. § 56-7-201 (2005)). *Id.* at 273-74.

In *In re Gilly’s Estate*, the decedent, also an employee of Pittston Clinchfield Coal Sales Corporation, died while co-piloting the same plane as the decedent in *Quint. Gilly*, 322 N.Y.S.2d at 743-44. As in the *Gilly* case, the decedent here was also covered under the same “Liability-Guest Voluntary Settlement” provision of the general insurance coverage plan taken out by Pittston. *Id.* The decedent “was survived by a wife, the sole beneficiary under his will, and two infant children,” who, as in *Gilly*, each laid claim to the proceeds of the voluntary settlement provision. *Id.* at 743-44. At trial, the decedent’s wife argued “that the policy [was] really an accident and health insurance policy under which the indemnity for loss of life is payable to a designated beneficiary or in the absence of a designated beneficiary to the estate of the decedent.” *Id.* at 744. However, the court disagreed, and found that the provision instead constituted “a payment for the wrongful death of decedent.” *Id.* at 744-45. In support of this holding, the court noted that, under the provisions of the voluntary settlement provision, “a condition of payment [was] a release signed by the person or persons having ‘a cause of action for the death’ and that in the absence of a release ‘the Company will no longer be bound to pay [s]uch benefits.’” *Id.* at 745. Thus, based upon this language, the court found it reasonable to conclude that the payment of proceeds under the voluntary settlement provision constituted “a payment for the wrongful death of decedent,” and should thus “be paid to those who have suffered a pecuniary loss.” *Id.* at

³Tenn. Code Ann. § 56-1108 has subsequently been re-codified as Tenn. Code Ann. § 56-7-201, and, although substantively the same, currently reads as follows:

Any life insurance effected by a husband or wife on such person’s own life shall, in case of that person’s death, inure to the benefit of the surviving spouse and children, and the money thence arising shall be divided between them according to the statutes of distribution, without being in any manner subject to the debts of the decedent, provided, that the proceeds of such insurance payable to a testate estate shall pass, as part of the estate and under the dispositive provisions of the will, as ordinary cash, whether or not the will uses any apt or express words referring to the insurance proceeds, but such proceeds shall not be subject to the debts of the decedent unless specifically charged therewith in the will.

Tenn. Code Ann. § 56-7-201 (2005).

745-46. In light of these findings, the *Gilly* court divided the proceeds among the decedent's surviving wife and children.⁴

In the case at bar, we choose to follow the reasoning set forth in the *Gilly* case and thus find that the proceeds from the voluntary settlement provision constitute a settlement for a wrongful death claim. Although the Federal District Court for the Eastern District of Tennessee in *Quint* found that a similar policy provision constituted a life insurance policy that the decedent had procured upon his own life by accepting employment with the employer who purchased the policy, we find the policy in this case more analogous to a wrongful death provision. As previously noted in this opinion, the purpose of the voluntary settlement provision, and the insurance policy as a whole, was to provide protection to Haulers, not to Decedent. Specifically, upon Decedent's death, the policy does not provide for an automatic payment of proceeds, but rather grants *Haulers* the option of offering up to \$250,000 as a lump sum payment in exchange for the waiver of any liability claims *by or for* the injured party. In Tennessee, the only cause of action that a person could bring against Haulers for the death of Decedent in this case would be a wrongful death claim under Tenn. Code Ann. § 20-5-106. *E.g.*, *Jordan v. Baptist Three Rivers Hosp.*, 984 S.W.2d 593, 596-97 (Tenn. 1999). Thus, the proceeds from the voluntary settlement provision in this case would only be paid upon receipt of a waiver from the person having the right to prosecute a claim for wrongful death. Here, that person is clearly Appellee as Decedent's surviving spouse under Tenn. Code Ann. § 20-5-106, which provides as follows:

(a) The right of action which a person, who dies from injuries received from another, or whose death is caused by the wrongful act, omission, or killing by another, would have had against the wrongdoer, in case death had not ensued, shall not abate or be extinguished by the person's death but shall pass to the person's *surviving spouse* and, in case there is no surviving spouse, to the person's children or next of kin; or to the person's personal representative, for the benefit of the person's surviving spouse or next of kin; or to the person's natural parents or parent or next of kin if at the time of death decedent was in the custody of the natural parents or parent and had not been legally surrendered or abandoned by them pursuant to any court order removing such person from the custody of such parents or parent; otherwise to the person's legally adoptive parents or parent, or to the administrator for the use and benefit of the adoptive parents or parent; the funds recovered in either case to be free from the claims of creditors.

Tenn. Code Ann. § 20-5-106 (Supp. 2005) (emphasis added). As a result, we hereby affirm the trial court's holding that the proceeds from the voluntary settlement provision in this case

⁴Under the New York statutes, "the estate representative is the one authorized to maintain an action for wrongful death." *Gilly*, 322 N.Y.S.2d at 745. However, "the beneficiaries of any recovery are those distributees who have been pecuniarily injured." *Id.* (citation omitted). In *Gilly*, the court found that the pecuniarily injured parties would be the widow and infant children. *Id.* at 745

constitutes a settlement of a wrongful death claim payable to Appellee as Decedent's surviving spouse.

Conclusion

Based on the foregoing, we affirm the trial court's holding that the proceeds from the voluntary settlement coverage constitute a settlement of a wrongful death claim, and are thus payable to Appellee. Costs of this appeal are taxed to Appellant, Patricia Selle, and her surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE